

## **10635 Collection and Disbursement of Backpay and Interest**

**10635.1 Standard Procedures for Disbursement of Backpay and Interest Payments:** A respondent should be requested to make payment of net backpay and interest due a discriminatee by delivering checks made payable to individual discriminatees to the Regional Office for transmission to them.

Respondent employers should make appropriate withholding of FICA, Federal, and state income taxes from the wage portion of the backpay amounts. Respondent employers are also solely responsible for the reporting and payment of Federal and state unemployment taxes that may be due on backpay.

See Compliance Manual section 10637 regarding treatment of taxes and withholding from backpay and interest.

Backpay and interest checks should then be delivered personally or mailed by certified mail, return receipt requested, to each discriminatee with a letter explaining the method of computation and any deductions for taxes.

**10635.2 Direct Distribution by Respondent:** The respondent may distribute payments directly to discriminatees, but only on conditions prescribed by the Region. It must provide the Regional Office with receipts or other suitable evidence of payment.

**10635.3 Other Methods of Payment:** Any other proposed method of payment not in accord with sections 10635.1 and 10635.2 above, such as a request by a charging party union that backpay checks be sent to it for distribution to discriminatees, should be cleared by telephone or memorandum with the Division of Operations-Management.

**10635.4 Payment to Discriminatees not Available to Receive Payment in Person:** Appropriate arrangements may be made at the request of discriminatees who are unavailable to receive mail to have backpay checks sent to locations they designate. Discriminatees who anticipate being unavailable during the course of unfair labor practice proceedings should make such arrangements in advance.

See Compliance Manual section 10640 regarding procedures for depositing backpay checks to hold in escrow through the Agency's Finance Branch.

## **10635.5–10635.6**

**10635.5 Power of Attorney:** When checks cannot be safely transmitted or readily redeemed, such as may occur when the discriminatee is in the Armed Forces, payment of backpay can be facilitated by having the discriminatee execute a power of attorney, preferably in advance, designating representatives, usually close relatives, to accept payment in his or her behalf.

See Appendix 15 for a sample power of attorney form:

The power of attorney should be in duplicate and a copy of the power of attorney should be given to the Regional Office and kept in the case file. The backpay check should be payable to the discriminatee and not the “attorney” and the discriminatee should be warned that giving a power of attorney is like delivering cash, inasmuch as the discriminatee will have little or no recourse if the “attorney” absconds or embezzles.

Note that the discriminatee could strike paragraph (b) from the sample power of attorney form, and then the “attorney” could do little more than hold the check for safekeeping or deposit it in the discriminatee’s bank account.

Because of the circumstances under which a power of attorney to collect backpay may be executed, and to avoid later contests over its validity, the power referred to in this section should be acknowledged. By acknowledgment is meant a formal declaration by the person executing the power before a proper official that the instrument is the former’s act. See Appendix 16 for samples of two forms of acknowledgment, the first being generally appropriate and the alternate form being appropriate only for persons in the military.

**10635.6 Amount Due Deceased Discriminatees:** The backpay due a deceased discriminatee should be paid to the legal administrator of the estate or to any person authorized to receive such payments under applicable state law.

Before disbursing backpay due the estate of a deceased discriminatee to any individual, the compliance officer should obtain a copy of the deceased discriminatee’s death certificate and either a copy of the court document appointing the individual as administrator/executor of the estate or, in the event no administrator or executor was appointed, Form 1055, Claim Against the United States for Amounts Due in the Case of a Deceased Creditor, completed by the deceased discriminatee’s heir.

## 10635.7–10635.8

**10635.7 Lump-Sum Payments, When Net Backpay Due Individual Discriminatees is Not Determined:** When backpay has been settled on the basis of respondent payment of a lump sum, and the amount due each individual discriminatee has not been determined at the time of the agreement, the following procedure for collection and disbursement may be used.

The settlement should provide for the deposit of the agreed lump sum in an escrow account, preferably one opened through the Agency's Finance Branch.

See Compliance Manual section 10640 regarding procedures for establishing and using escrow accounts through Finance Branch. The compliance officer should determine the proportionate share due each discriminatee. To avoid disputes, it is good practice to secure agreement of the charging party and discriminatees concerning shares. The settlement should provide for the full distribution of the agreed-on amount. In the event the amount due missing discriminatees cannot be determined or distributed, the settlement should provide for redistribution of unclaimed amounts to discriminatees who have been located and who have not received 100 percent of backpay due.

**10635.8 Undistributed Funds Not Subject to Setoff, Liens, Garnishment, etc.; Washington Notice of Attachment Required:** Because a backpay award is made in effectuation of a public policy and has no private character whatsoever until distributed, neither the Agency nor the respondent can be held subject to assignments, liens, garnishments, or other processes before the funds have been distributed.<sup>177</sup> For the same reason, a respondent cannot set off debts owed it by the discriminatee against its backpay liability,<sup>178</sup> and the execution of a release by the discriminatee to the respondent cannot be binding on the Agency.

If a Regional Director or other Regional Office staff member or a respondent is served with notice of a lien or levy or a restraining order of the nature indicated above, the Region should advise the initiator of the process of the Agency's policy. If the initiator does not agree to withdraw the process, the Region should inform Special Litigation Branch and give details to enable steps to be taken immediately to enjoin the local court proceeding or to otherwise resolve the issue.

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<sup>177</sup> See, for example, *NLRB v. Sunshine Mining Co.*, 125 F.2d 757, 762 (9th Cir. 1942); *NLRB v. State of Illinois Department of Employment Security*, 777 F.Supp 1416 (N.D. Ill. 1991), affd. 988 F.2d 735 (7th Cir. 1993); and *Lenz v. NLRB*, 915 F.2d 388 (8th Cir. 1990).

<sup>178</sup> See, for example, *NLRB v. Mooney Aircraft*, 366 F.2d 809, 811 (5th Cir. 1966).

### **10637–10637.3**

#### **10637                    Taxes and Withholding**

##### **10637.1                    Income Tax Withholding by Respondent Employers:**

A respondent employer should treat backpay as wages and make appropriate withholding of payroll taxes. An employer is responsible for determining proper tax withholding, and for submitting proper tax payments and reports to tax authorities as well as for providing tax reports to discriminatees to use in filing income tax returns. Both parties should be apprised that nonwage elements of backpay, such as interest and reimbursement for medical expenses, are not subject to withholding of payroll taxes.

In no instance, however, should the compliance officer provide advice to the parties regarding tax matters. Rather, the parties should be referred to the Internal Revenue Service.

##### **10637.2                    Social Security Taxes and Withholding by Respondent**

**Employers:** The taxes enacted by the Federal Insurance Contributions Act, commonly referred to as the social security or FICA tax, are deducted from employee wages.<sup>179</sup> Employers pay an equal amount in addition. The FICA tax rate has increased over the years, as has the amount of annual wages subject to the tax.

If questions arise, the employer should be advised that FICA should be withheld and employer contributions made, at rates and earnings limits in effect at the time backpay is paid. FICA taxes should not be withheld on the basis of former FICA rates in effect during the backpay period. The employer is responsible for withholding correct amounts for taxes due under FICA.

Nonwage components of backpay, such as interest, insurance, payments made through retirement plans, or medical benefits are not subject to social security tax. However, the compliance officer should not advise the parties in these areas. Rather, they should be referred to the Internal Revenue Service.

##### **10637.3                    Discriminatees' Obligations Regarding Taxes:**

Discriminatees should be informed that they are responsible for proper filing of income tax returns and proper payment of taxes resulting from receipt of backpay and interest. It should be emphasized that backpay

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<sup>179</sup>*Social Security Board v. Joseph Nierotko*, 327 U.S. 358 (1946) (the Court held that backpay is considered as wages for purposes of social security tax contributions).

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and interest received, whether from an employer, a union, or from both, are taxable as income.

The discriminatee should receive an itemization of payroll taxes withheld from backpay and, at the proper time, should receive a W-2, 1099-MISC, or other appropriate tax forms from the respondent.

If the backpay award is large, or covers a long backpay period, special tax considerations may apply. For example, a large payment of backpay may place the discriminatee in a higher tax bracket for the year in which it was received, and there may be ways of averaging the income with that of earlier years in order to reduce tax liabilities. A large backpay award may exceed the annual earnings limit for FICA tax, and the discriminatee may be entitled to a refund of FICA taxes withheld for amounts in excess of that limit.

Again, the compliance officer should advise the discriminatee to contact the Internal Revenue Service for information concerning payment of taxes resulting from receipt of backpay.

**10637.4 Allocation of Social Security Credit:** The Social Security Administration credits employee earnings by calendar years for purposes of determining benefit entitlements and amounts. A backpay award will be credited as earnings by Social Security for the year in which it was paid. There are situations where it may be advantageous for a discriminatee to have the Social Security Administration allocate earnings from a backpay award to the years of the backpay period.

*For example,* if a backpay award exceeds the earnings limit for FICA taxes for the year in which it was paid, allocation of the surplus could result in higher future benefits. Also, if a discriminatee had no earnings during a year of the backpay period, allocation of the backpay award to that year could affect the discriminatee's entitlement to social security benefits.

Discriminatees should be advised to consult with the Social Security Administration concerning whether it would be advantageous to seek an allocation of backpay to previous years, and the procedures for doing so. In the event that such an allocation is pursued, the compliance officer should cooperate by providing documentation of the allocation of net backpay by calendar quarter throughout the backpay period.

## **10637.5–10637.7**

**10637.5 Joint Employer-Union Liability for Income and Social Security Taxes and Withholding:** A union cannot deduct or withhold Federal or local income taxes except when the union is the discriminatee's actual employer.<sup>180</sup> Therefore, when the employer and union are jointly liable for backpay, the employer shall deduct income and FICA taxes from its share of the backpay award sufficient to cover the entire backpay award, including the union's share, and remit such amounts to the appropriate Federal and local revenue agencies. The employer respondent is also responsible for paying the employer FICA tax on the entire backpay award, including the union's share.

In order to compensate for the additional contributions to be paid by the employer, it may be appropriate to adjust the respective shares of backpay paid by the employer and the union.

**10637.6 Union Solely Liable for Income and Social Security Taxes and Withholding:** When a union alone is liable for backpay, the payment is not treated as wages for purposes of income tax withholding. Therefore, no income tax and no FICA tax withholding should be made.<sup>181</sup> The union is responsible for proper reporting of backpay to tax authorities.

Note, however, that when a union is an employer in an unfair labor practice proceeding, backpay should be treated as wages for withholding of taxes.

Note also that discriminatees are responsible for reporting to tax authorities and paying proper taxes on backpay, whether it is in the form of backpay, interest, or other reimbursements.

**10637.7 Lump-Sum Payments and Payments for Missing Discriminatees:** When an employer respondent transmits backpay to the Region in a lump sum or for a missing discriminatee, to be paid out through the Agency's Finance Branch, it should also include the amount of the employer FICA tax at the rate current at the time of payment. When the lump sum is divided or discriminatees are located, appropriate tax withholding and payments are then made by the Agency to the IRS for both income and social security taxes.

See the following sections regarding procedures for holding and disbursement backpay through the Agency's Finance Branch.

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<sup>180</sup> *Teamsters Local 249 (Lancaster Transportation)*, 116 NLRB 399 (1956).

<sup>181</sup> *Ibid.*

## **10640 Escrow Accounts**

**10640.1 Overview:** Although payment of backpay is normally made as provided in Compliance Manual section 10635.1, it is sometimes appropriate to have backpay paid into an escrow account, where it may be held and from where it may be disbursed to discriminatees.

Escrow accounts are appropriate when:

- a) the Region wishes to hold backpay due a discriminatee who is missing or otherwise unavailable to receive it,
- b) a respondent is either incapable of or unwilling to prepare individual backpay checks payable to the discriminatees,
- c) a settlement is based on a lump-sum amount to be paid, with allocation of the amount to individual discriminatees not determined at the time of settlement, or
- d) a bankruptcy distribution must be divided and distributed among discriminatees.

Under no circumstances should backpay checks be made payable to a Board employee. Under no circumstances should an account be opened in the name of a Board employee for use in disbursing backpay.

Regions may submit backpay to the Agency's Finance Branch in order to establish an escrow account. Such accounts may be used to hold money indefinitely before disbursement.

The following sections describe procedures for doing so, and for disbursing backpay from the escrow account to discriminatees.

**10640.2 Opening an Escrow Account Through the Agency's Finance Branch. Instructions to Respondents:** When a Region wants to collect and disburse backpay through a Finance Branch escrow account, it should instruct the respondent to submit a check to the Regional Office made payable to the National Labor Relations Board.

No deduction of any taxes should be made from the respondent's check. Rather, the amount of the check should reflect all backpay, interest, and other amounts, such as reimbursement for medical expenses, that are due, as well as the Employer's FICA tax share of the wage component of backpay. Finance Branch will handle withholding of payroll taxes and reporting of income for tax purposes at the time it disburses backpay.

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The respondent must also submit its Federal tax identification number, which will be used by Finance Branch for tax reporting purposes.

In cases with more than one discriminatee, a single check may be submitted for all amounts due.

**10640.3            Transmitting Checks to Finance Branch:** On receipt of the backpay check from the respondent, the Region should write the unfair labor practice case number on the face of the check and send it to the Division of Administration, Finance Branch, with an accompanying memorandum.

The transmittal memorandum should contain the unfair labor practice case name and number, explain the purpose of the check, and identify the type of award. The amount of the check representing the employer's share of FICA taxes should be noted.

The transmittal memo may request that Finance Branch hold the amount, or portions of the amount, in escrow. It may also request immediate disbursement of the check, or portions of the check. See Compliance Manual section 10645.1, below, regarding information that must be included in a request for disbursement.

The Region must ensure that the remittance control procedures set forth in Division of Operations-Management Memorandum OM 92-13 (see Appendix 1) are carefully followed. Thus, the check must also be accompanied by Forms NLRB-5472 and NLRB-5473, for use by Finance Branch in its procedures for confirming receipt of, tracking, and reconciling remittances.

**10640.4            Interest-Bearing Accounts Through Finance Branch:** Finance Branch will deposit checks into an escrow account with the United States Treasury. Normally, money deposited in the escrow account will not accrue interest. If the amount to be deposited into escrow is at least \$10,000, however, and the money will remain in escrow for a minimum of 30 days, the Region may request Finance Branch to invest the money in interest-bearing securities controlled by the U.S. Treasury.

The Region should request Finance Branch to disburse money invested in interest-bearing securities in the manner set forth in Compliance Manual section 10645, below.



## 10640.5

### **10640.5 Escrow Accounts Established Through Local Private**

**Banks:** On occasion, such as when the sum to be placed in escrow is less than \$10,000, or the escrow period will be less than 30 days, the use of an escrow account in a local bank has enabled the accrual of interest to increase the amount of backpay available for the discriminatees.

Use of Finance Branch escrow accounts is strongly preferable to local bank escrow accounts. Escrow accounts established through Finance Branch allow the Agency to retain full control over disbursement of money held, avoids problems with insurability, and avoids the possibility that the Agency will be considered an employer under IRS regulations.

If the Region believes that it is advisable to have the money deposited into an account at a local bank, the account must be established in the name of the respondent, but expendable only on order of the Regional Director. In such an account, the only responsibility of the Regional Office is authorization for disbursement of backpay.

Local bank escrow accounts should *not* be used in the following situations:

- (a) when there is concern that the respondent will seek protection under the Bankruptcy Code before backpay has been fully disbursed, because a bankruptcy petition may impede disbursements from the escrow account;
- (b) when the respondent has ceased or will cease operations, because of the potential for a determination by the IRS that the Agency is the employer when the respondent goes out of business; or
- (c) when the escrow account will exceed \$100,000, the insurability limit established under F.D.I.C. regulations.

In these situations, the backpay escrow accounts established by the Finance Branch must be used.

The respondent employer is responsible for all required payroll transactions, such as preparation of the backpay checks, payment of FICA and withholding taxes to the Internal Revenue Service, and preparation of tax and W-2 forms. Local bank escrow accounts should be established only in banks or other financial institutions where deposits are Federally insured.

To disburse money from an escrow account in a local bank in the name of the respondent, the Regional Director should authorize the release of

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the moneys to the respondent for issuance of the backpay checks. The respondent should be advised to prepare the backpay checks on the basis of the compliance officer's apportionment, making the appropriate tax withholding deductions from the backpay amount and submitting the appropriate taxes and its matching FICA payment to the IRS.

### **10645 Disbursement From a Finance Branch Escrow Account**

**10645.1 Procedures for Requesting Disbursement:** The Region should request disbursement of money held in an escrow account by submitting a memo to the Finance Branch that sets forth what amounts should be disbursed, for what purpose, and to whom. More specifically:

The memo must identify each discriminatee to whom a disbursement is to be made, and must include the discriminatee's social security number and current mailing address.

The memo must also state the amount and the nature of the disbursement. That is, it must state what amounts to be disbursed constitute wages, interest, reimbursement of dues, reimbursement for medical expenses, or other components of backpay. A disbursement to a single discriminatee may constitute more than one component of backpay.

The memo should also note the amount of employer FICA tax contribution, and include the employer's Federal tax identification number, along with the employer's current or last known address.

If there are missing discriminatees, the Finance Branch should be informed that additional requests for disbursement of the balance of the checks will be submitted as the remaining discriminatees are located.

**10645.2 Finance Branch Procedures for Disbursement:** Finance Branch will transmit payment requests to the Treasury Department, using information provided in the Region's memo. Treasury will mail backpay checks directly to discriminatees, without any cover letter. Finance Branch will withhold and transmit to IRS the appropriate amounts for income tax and FICA from the wage portion of the backpay amount. Finance Branch will also prepare and mail W-2 or 1099-MISC forms to the discriminatees no later than January 30 of the year following disbursement.

Finance Branch will not, however, be responsible for calculating or remitting to taxing authorities any amounts owed by the respondent on the backpay

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for Federal and state unemployment taxes nor will the Finance Branch be responsible for any reporting functions in connection with these taxes. These taxes are solely the responsibility of the respondent and the respondent should be so advised.

Finance Branch will not make withholding of any state income taxes either. Discriminatees should be advised that they are responsible for reporting earnings and making payment of state taxes as appropriate in their State.

Finance Branch will notify the Region when it receives notification from the U.S. Treasury that a check was returned to Treasury because of improper addresses or if the check was not cashed within 1 year from the date it was issued.

Although Finance Branch prefers to have the Treasury Department mail backpay checks directly to discriminatees, it will, on the request of the Region, send checks to the Region to disburse. If the Region undertakes disbursement of the checks, it should promptly return to Finance Branch any checks returned to it by the Postal Service as undeliverable or for whom it cannot locate a discriminatee so that Finance Branch may make appropriate adjustment of its records.

**10645.3            Escrow for Missing or Unavailable Discriminatees:**  
When a Board order or court judgment requires, or when the parties have agreed pursuant to a settlement agreement, that the backpay due a missing discriminatee be placed in escrow, the respondent should be instructed to follow procedures set forth in Compliance Manual section 10640.2 in submitting the backpay amount to hold.

See Compliance Manual section 10548 regarding missing discriminatees, and section 10548.2 regarding methods and resources available for locating missing discriminatees.

If the amount submitted represents final net backpay due the discriminatee, the Region should follow procedures set forth in Compliance Manual section 10645.1 for disbursing the amount at the time the discriminatee is located or otherwise available.

If the amount held represents gross backpay, or the amount of net backpay due the discriminatee depends on further investigation of interim earnings, mitigation, or other issues after the discriminatee has been found, the com-

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pliance officer should investigate these issues when the discriminatee has been found.

The respondent should be advised of the results of this investigation and of a proposed distribution to the discriminatee from the amount held in escrow. If agreement is reached, standard procedures for requesting disbursement should be followed. If more is held in escrow than the discriminatee is entitled to, the Region should refund the excess by requesting its disbursement in the form of a check payable to the respondent.

In the event that no agreement can be reached concerning net backpay due the discriminatee, the Region may undertake further compliance proceedings as appropriate depending on the circumstances and the stage of the case. It may be appropriate to revoke an underlying settlement agreement, or initiate further compliance proceedings.

**10646 Extinguishment of Backpay Entitlement for Discriminatees Missing After a 1-Year Period:** Absent compelling circumstances, if a discriminatee is not located within 1 year of the date that backpay is deposited in escrow or within 1 year from the date a Board order becomes final, whichever is later, the escrow amount shall be returned to the respondent and the discriminatee's backpay entitlement shall expire.<sup>182</sup> When backpay is paid through installments, the 1-year period will begin when the Region receives the final installment payment.

In an informal settlement agreement, the 1-year period shall run from either the date of the approval of the settlement agreement by the Regional Director or the denial of the appeal or expiration of the appeal period in a unilateral settlement, or from the date of receipt of the funds by the Regional Office, whichever occurs later. The settlement should contain provisions as above pertaining to the escrow period and the return of undistributed funds to the charged party.

**10647 Escrow in Cases Involving Bankruptcy:** In cases involving bankruptcy proceedings, the total sum allocated by the bankruptcy court should likewise be forwarded to the Regional Office in a check made payable to the National Labor Relations Board. The Region, in turn, will submit the check to the Finance Branch for deposit into an escrow account.

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<sup>182</sup> See *Starlite Cutting*, 284 NLRB 620 (1987), clarifying 280 NLRB 1071 (1986); and *Groves Truck & Trailer*, 294 NLRB 1 fn. 3 (1989).

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The Region should consult with Special Litigation Branch regarding backpay held from a bankruptcy distribution for a missing discriminatee.

**10648                    Procedures for Closing Escrow Accounts:** If at the end of the period provided for locating discriminatees some are still missing and, thus, there are funds remaining in the account, the Region should submit a final memorandum to the Finance Branch setting forth the distribution of the remaining balance, either to be returned to the respondent and/or to be distributed to discriminatees whose locations are known.

When the balance in the account is to be refunded to the respondent, Finance Branch should be requested to draw a check payable to the respondent and forward it to the Region for distribution with the Region's cover letter closing the case, if otherwise appropriate for closing.

### **10670                    Reports and Administration**

**10671                    Responsibility of the Compliance Officer:** It is the administrative responsibility of the compliance officer to maintain records of compliance cases, to accurately report compliance actions, to uphold Agency operational goals, and to complete case closing reports.

**10671.1                Recording and Monitoring Compliance Cases:** Compliance case management begins when the Region approves an informal settlement agreement or issues a complaint.

The compliance officer is responsible for securing compliance with remedial provisions of settlement agreements, for reporting compliance actions in the compliance file, and for recommending to the Regional Director that the case be closed or that other action be undertaken as appropriate.

The compliance officer is responsible for monitoring the status of unfair labor practice proceedings for complaint cases and for undertaking compliance actions. See Compliance Manual section 10500 regarding general responsibilities of the compliance officer and section 10505 regarding compliance actions to be undertaken at different stages of unfair labor practice proceedings.

To maintain an inventory of the compliance status of complaint cases, the compliance record card, Form NLRB-4293, may be used. Note also that data-management computer programs may also provide an appropriate

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means of recording compliance cases. Under any inventory system, the compliance officer should have a method to ensure prompt followup actions.

As the case progresses, the compliance officer should record for the case file all steps taken in compliance so that with a minimum of oral briefing, the compliance aspects of the case could be transferred to another for handling.

**10672.2 Compliance with Informal Settlements:** The compliance officer should record for the case file all steps taken in compliance. The posture of the case should be such that, with a minimum of oral briefing, the compliance aspects of the case could be transferred to another for handling.

Reports of the compliance officer in cases of informal settlement should be submitted with appropriate recommendations to the Regional Director.

See Unfair Labor Practice Proceedings Manual section 10146.

Closing action should be in accord with the requirements of Compliance Manual section 10685.

## **10672 Operational Goals**

**10672.1 Overview:** To seek timely compliance, the Agency has established a series of operational goals regarding actions to be taken on Board orders and court judgments, and a system for reporting on the status of cases in which those goals have not been met.

The basic operational goal in Board order and court judgment cases is to obtain full compliance within 80 days of the receipt of the case by the Region.

The following sections define when cases are in the stages for which operational goals apply, and procedures for reporting compliance status.

**10672.2 Board Order Stage (Stage 1):** Cases in this stage are defined as those following the issuance and receipt of a Board order or a supplemental Board order that upholds the complaint or compliance specification in whole or in part.

### **10672.2–10672.3**

Regions should not await entry of a Board order to commence compliance efforts in cases in which exceptions to the administrative law judge's decision are not filed and a Board order will automatically issue. Such efforts should be undertaken immediately on expiration of the period within which to file exceptions. The receipt of an administrative law judge decision or the expiration of the exceptions period does not trigger the running of time for operational goals and such cases do not enter Stage 1 until receipt of the Board order.

A Board order case is removed from Stage 1 when enforcement is recommended or a petition for review is filed, when the case closes, or when a compliance specification issues.

Execution and approval of a stipulation waiving enforcement proceedings and providing for the issuance of a compliance specification does not itself toll the running of the 80 days.

If a Board order case that has been referred for enforcement is formally referred back to the Region by memorandum from the Division of Enforcement Litigation, the case reverts to a Stage 1 case.

A petition for rehearing or a motion to amend the Board order removes the case from Stage 1 and suspends the running of time for meeting operational goals until the Board issues its ruling. The running of time is also suspended after a case has been referred to the Division of Operations-Management for advice or other clearance. When the case is returned to the Region, for purposes of meeting operational goals, the time will continue to accrue from the date the order was initially received, with the period during which the case was before Operations-Management deducted.

**10672.3 Court Judgment Stage (Stage 2):** Cases in this stage are defined as those following the issuance and receipt of a court of appeals enforcement judgment, a contempt judgment, or a Supreme Court judgment. In cases in which the Board's order was only partially enforced, this stage begins with the date that the Region receives notification that the Board will not seek certiorari on that portion of the order that was not enforced.

Court judgment cases shall be removed from Stage 2 on the issuance of a compliance specification, on the closing of the case, or on a recommendation for contempt. If contempt is recommended, the case reverts

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to a Stage 2 case if it is formally referred by memorandum from Contempt Litigation back to the Region for appropriate action. Following the issuance of a contempt decree, the case shall again enter Stage 2 on receipt of the decree by the Region, and a new 80-day period shall begin. The case is removed from Stage 2 if the respondent has secured a stay of mandate for purposes of a petition for certiorari in the Supreme Court, until the 90-day period for such filing has passed or the respondent announces abandonment of its petition, whichever is earlier, or until the Supreme Court rules on the petition for certiorari. If no stay of mandate has been granted, the case remains in Stage 2, and compliance should be sought, notwithstanding the respondent's petition for certiorari.

The running of time for meeting operational goals for cases in Stage 2 is suspended for the period in which a court judgment case is in the Division of Operations-Management for advice or other clearance, or following a recommendation for contempt. On the return of the case to the Region, the 80 days will continue to accrue from the date of the receipt of the court judgment, with a deduction for those days while the case was in Operations- Management or Contempt. When a stay of mandate has been granted, it shall accrue from the date of receipt of the ruling on the petition for certiorari, or the expiration date of the 90-day appeal period, or of the respondent's announced abandonment of intent to file.

If the Region elects to retain a court judgment case in open status because other unfair labor practice charges have been filed that may be enforceable under the judgment, the case remains in Stage 2.

**10672.4                    20-Day Internal Regional Operational Goal:** Notices should be posted within 20 days following entry of the case into Stage 1 or 2.

**10672.5                    30-Day Operational Goal:** Absent the respondent's commitment to and progress on compliance, the Region should recommend enforcement proceedings within 30 days after receipt of a Board order.

If, after affirmative efforts to procure compliance, it is apparent that the respondent is unwilling to comply with the Board's order, the Region should immediately recommend enforcement. This is especially true in summary judgment 8(a)(5) test of certification cases, where it is unlikely that repeated efforts to secure compliance within the full 30-day period will prove successful.



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**10672.6            40-Day Internal Regional Operational Goal:** Reinstatement should be offered and computations of backpay should be completed within 40 days of the entry of a case into Stage 1 or 2.

**10672.7            80-Day Operational Goal:** If compliance has been secured and no further legal action is warranted, cases should be closed and closed case reports submitted within the first 80 days following entry of the case into Stage 1 or 2.

**10672.8            45-Day Operational Goal in Cases Involving Late Award of Court Costs:** The court of appeals does not always issue its judgment awarding court costs simultaneously with its judgment enforcing the Board's order. If a court costs judgment is received within 35 days of the entry of the case in Stage 2, the costs should be collected within the overall 80-day goal. If a court costs judgment is received more than 35 days after receipt of the underlying court judgment, the Region shall have 45 days from receipt of the court costs judgment to collect costs from the respondent or recommend other appropriate action. The 45-day goal does not operate to provide additional time for securing compliance with any other provisions of the court judgment.

**10673            Monthly Compliance Status Report:** Each month, the Region must prepare and submit to the Statistical Services Unit a compliance status report, listing *all* open compliance cases for which either a Board order has issued or a court judgment has been entered, regardless whether the case is pending in the Region or elsewhere. The report should be submitted as soon as possible after each month ends, and no later than the fifth day of the following month. One copy only should be submitted. The purpose of the report is to provide a complete listing of compliance cases that remain open in the Region and to report on the status of cases outside the operational goals.

The report should contain *three* sections. The *first* section is a list of all open Stage 1 and Stage 2 cases that are *outside* the 80-day or 45-day operational goal (applicable to late award of court costs; see Compliance Manual section 10672.8). The list should include the case name and number, the date of filing, and the date the Board order issued or court judgment was entered, as well as the date the case was received by the Region. A brief status report on each case should also be provided, through use of footnotes. This status report, if circumstances so warrant, may also request that the case be excused as an overage case. In addition, if the case was referred to Washington for any reason, the status report should

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note the date and the nature of the referral, as well as (if applicable) the date of the remand to the Region from Washington, so that the referral period may be appropriately deducted in evaluating whether the case has met the operational goal.

Regions may use Form NLRB-4637 [Compliance Case Report (Overage)] to convey the information required in the first section of the report, or may substitute their own computer format as long as the document is clearly marked and includes the designation “Form NLRB-4637” in the upper left corner. This section (i.e.—the cases requiring a status report) should be on a separate sheet(s) from the other two sections.

The *second* section is a list of all Stage 1 and Stage 2 cases currently active in the Region that are still *within* the 80-day operational goal as set forth in Compliance Manual section 10672 above. The list should include the case name and number, the date of filing, the date of the Board order or court judgment, and the date the case was received by the Region, but should *not* include any report of the status of the case or compliance actions undertaken to date.

The *third* section is a list of all cases that remain open, but which are no longer at Stage 1, for any of the reasons set forth in Compliance Manual section 10672.2 or at Stage 2, for any of the reasons set forth in section 10672.3. This list should include the case name and number, the date of filing, the date the Board order issued or court judgment was entered, and the date the case was received by the Region. The list should also note the date and nature of the action which removed the case from Stage 1 (e.g., enforcement recommendation) or Stage 2 (e.g., contempt recommendation).

**10674                      Regional Performance and Excusable Overage Situations:** Regional Office compliance performance is in part evaluated on the basis of the number of unexcused overage cases as a percentage of the total number of compliance cases in stages 1 or 2.

The explanation provided in a footnote for each case in the monthly compliance status report should provide sufficient information to allow for an informed determination by the Statistical Services Unit and/or the Division of Operations-Management as to whether an excuse is warranted. The footnotes should be reviewed and updated in each monthly report to reflect actions taken to secure compliance during that month.

The following sample explanations generally constitute a basis for excusing an overage case:

- a. Bankruptcy proceedings block compliance. The excuse should specifically set forth the compliance achieved, or the reason outside the Region's control why compliance cannot be obtained. For example, the excuse should note whether backpay has been calculated and a proof of claim filed (give date); whether notices have been posted or the respondent was unable to post due to cessation of operations; or whether any reinstatement was offered or foreclosed due to a reduction or cessation of operations.
- b. Backpay being distributed in installments, last payment due (give date); compliance otherwise achieved.
- c. Washington authorization on (give date) to "freeze" case until action taken by another Federal or state agency/court concerning (give status and nature of other proceedings).
- d. Case pending in Division of Operations-Management pursuant to submission by Regional Office on (give date). Submissions in this area might include cases involving approval of a formal settlement stipulation pertaining to backpay or other compliance issues, requests to close a case absent full compliance, and requests for advice or clearance on procedural matters.
- e. Case pending in Advice pursuant to submission by Regional Office on (give date). Submissions would include cases submitted to the Division of Advice for substantive guidance.
- f. Bargaining order case; notices posted; all other compliance achieved; parties in early stages of bargaining; too early to ascertain if the respondent is bargaining in good faith.
- g. Court judgment received (give date); compliance achieved in all respects, except court has not yet awarded court costs.
- h. Court judgment received (give date); compliance achieved in all respects, except court costs awarded by judgment received (give date); 45-day time limit for collecting costs not yet expired.

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- i. Court judgment case referred to Enforcement Litigation on (give date) on issue of collection of court costs.
- j. On (give date), Region dismissed newly filed charges that alleged noncompliance or new violations against the respondent subject to outstanding Board order or court judgment. New charges are on appeal (or awaiting expiration of appeal period). Note that on denial of the appeal or expiration of the appeal period, the Region should close the compliance case.
- k. Board order case held open because although compliance had been obtained, on (give date) charges were filed against same respondent that may result in enforcement proceedings. The excuse should state the status of the charge, i.e. (a) under investigation, or (b) Regional determination to issue complaint, absent settlement.
- l. Court judgment case held open; compliance has been obtained but on (give date) charges have been filed that may result in contempt proceedings. The excuse should state the status of the charge, i.e. (a) under investigation, or (b) Regional determination made to issue complaint, and case will be referred to Contempt Litigation.
- m. Compliance is complete; backpay has been calculated and paid by the respondent; discriminatees cannot be located for payment of backpay. The excuse should state the action taken by the Region to locate the discriminatees. The excuse should also state steps taken by the Region to place missing discriminatees' backpay in escrow. Absent unusual circumstances, a case will not be excused because a discriminatee cannot be located to calculate interim earnings and net backpay inasmuch as procedures exist to either secure compliance based on a percentage or pro rata share of gross backpay or, absent settlement, a compliance specification can issue alleging gross backpay only.
- n. All compliance achieved within 80 days except for completion of 60-day notice posting period. The Region should specify that the respondent has fully complied except for completion of the notice posting; reason for the delayed notice posting; and the expiration date of the posting period.
- o. Collection cases. See sections 10590.8(c), 10592.3(d), and 10593.1.

p. Case excused pursuant to Compliance Manual section 10675.

**10675 Report on Scheduled Action in Complex Overage Compliance Cases:** Concurrently with the transmission of the overage compliance report, each Region should submit to the Division of Operations-Management a schedule of proposed action for each case which can not be completed within the 80-day time period because of extraordinary and involved problems. Although the schedule of action must be tailored to the requirements of each case, the Region should initially state the circumstances distinguishing the case as extraordinary and involved and the actions taken thus far to secure compliance. The schedule should include at least the following steps:

Backpay and Reinstatement Cases

1. Date reinstatement will be offered
2. Date gross backpay computation will be completed
3. Date interim earnings computation will be completed
4. Date backpay will be received or
5. Date backpay specification will be completed, or
6. Date further legal action will be recommended (enforcement, contempt, etc.)
7. Additional steps the Region intends to take to secure compliance.

Collective-Bargaining Cases

1. Dates of inquiries to be made of the parties concerning status of negotiations
2. Date for closing the case or recommending further legal action
3. Any additional or interim steps, including timeframes, which Region intends to take to secure compliance.

Appropriate schedules of actions should be submitted for other cases involving complex and extraordinary problems, such as hiring hall discrimination

## **10675–10680**

cases. In any case, the memo should be revised each month to reflect the actions completed and compliance achieved during the month or the additional steps taken to meet the proposed schedule within the established timeframe.

Such cases will generally be excused during the period that compliance proceedings are progressing within the proposed schedule of action.

**10676                    Advice on Compliance Problems:** The Regional Director should feel free at any time to seek advice on problems encountered while securing compliance. Although the responsibility for a decision to seek advice rests with the Regional Director, disagreement with the Regional Office position by one of the parties or disagreement between the Regional Attorney and the Regional Director may be an indicator that advice should be sought.

Any request for advice on compliance should contain a full statement of circumstances, the positions of the parties, and the recommendation of the Regional Director.

Requests for advice concerning novel substantive legal issues arising in prejudgment matters should be submitted to the Division of Advice, with a copy to the Division of Operations-Management.

Requests for advice concerning techniques, procedures, internal policy, and other issues in prejudgment matters should be submitted to the Division of Operations-Management.

Requests for advice or clearance concerning contempt issues on court judgment cases, including collection matters, should be submitted to Contempt Litigation Branch.

Requests for advice concerning bankruptcy issues should be submitted to Special Litigation Branch.

**10680                    Authorization or Clearance, Submission, Notification, or Consult Situations:** Clearance or advice should generally be obtained from the Division of Operations-Management before settling or closing a compliance case that involves a novel issue or compliance on terms not in conformity with standard requirements of remedial provisions.

## **10680–10680.1**

In addition, the following are situations in which a Region should obtain authorization or clearance, make a submission, notify, or consult a Washington division:

### **10680.1 Division of Operations-Management**

#### **A. Obtain Authorization or Clearance:**

1. Before demanding compliance with a judgment, when certiorari has been sought and there has been a stay of the mandate of the court of appeals. Section 10505.9.
2. Before issuing an investigative subpoena in a case alleging respondent conduct which is not clearly encompassed by a court judgment. Sections 10536, 10590.2, 10601.2, and 10601.3 (Note: Pursuant to section 10590.2, Regions are authorized to issue investigative subpoenas without clearance to investigate allegations of noncompliance with a judgment enforcing a Board order, but must submit a copy of the subpoena to Operations-Management, with a memorandum setting forth the basis on which it issued. See Item 7 under Submit, below.)
3. Before allowing respondent counsel to interview a discriminatee concerning mitigation issues. Sections 10545.2 and 10564.7.
4. Before using newspaper advertising to seek missing discriminatees. Section 10548.2.
5. Before submitting a request to IRS to forward letters to more than 50 missing discriminatees. Section 10548.2.
6. Before using private tracing services to seek missing discriminatees or missing respondents. Sections 10548.2 and 10601.7.
7. Before accepting a settlement in which any of the criteria set forth in Compliance Manual section 10564.1 are not met. Section 10564.2; including settlements in which backpay represents less than 80 percent of what full backpay has been determined to be. Section 10564.4.
8. Before agreeing to make discriminatees available to respondent's counsel for questioning concerning their interim earnings and search for work. Section 10564.7.

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9. Before accepting a settlement providing more than 100 percent of backpay as an inducement to discriminatees to waive reinstatement, or before accepting a settlement in lieu of reinstatement when there is convincing evidence of unsuitability for reinstatement. Section 10564.8.

10. Before accepting a backpay settlement on anything other than an equal proportion basis in Board order and court judgment cases involving joint and several liability. Section 10564.13.

11. Before issuing an investigative subpoena when the Region believes that a claim of privilege (e.g., doctor, attorney, reporter) will be raised as a defense against the subpoena. Section 10590.2.

12. Before closing a case on noncompliance, when investigation has revealed that the respondent, or any entity with potential derivative liability, is without means of satisfying the outstanding liabilities. Sections 10590.8(b), 10590.8(d)(2), and 10605.

13. When contempt proceedings may be appropriate, but prior to a Regional recommendation for such proceedings, unusual circumstances or problems militate against notice of potential liability to a third party which may acquire the respondent's business. Section 10592.8

14. When there is a likelihood that collection proceedings could result in substantial cost to the Agency (e.g., where execution could cause the Agency to be responsible for maintaining property). Section 10593.3.

15. Before retaining an accountant to examine books and records, or evaluate a respondent's professed inability to pay full liabilities. Section 10601.8.

16. When there are novel or complex issues concerning combination of compliance proceedings with unfair labor practice proceedings. Section 10620.3.

17. Before issuing a compliance specification absent court judgment unless stipulation waiving enforcement proceedings has been obtained. Section 10620.4.

18. In close or doubtful situations concerning mitigation before admitting a tolling of backpay in a compliance specification. Section 10621.6.



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19. Before withdrawing a compliance settlement where Operations Management authorization was required before the Region could accept the settlement. Section 10626.1.

20. Before authorizing distribution of backpay by any method other than direct distribution by the Region or the respondent. Section 10635.3.

21. Generally, before settling or closing a compliance case involving a novel issue or compliance on terms not in conformity with standard requirements of remedial provisions. Section 10680.

22. To close a case administratively (i.e., without notification to the parties). Section 10685.5.

### **B. Submit**

1. Letters to be forwarded to missing individuals through the Social Security Administration. Section 10548.2.

2. When merit is found to an unfair labor practice charge that may constitute noncompliance with an unenforced Board order, a memorandum containing a recommendation as to whether enforcement proceedings should be initiated with respect to the existing Board order. Section 10566.2 and 10566.4.

3. A recommendation that enforcement proceedings be initiated. Section 10585.4.

4. A copy of any recommendation that a protective order or 10(e) injunctive relief be sought. Sections 10585.4 and 10594.2(c).

5. A recommendation that enforcement proceedings be suspended or withdrawn. Section 10585.5.

6. A copy of any submission to Contempt Litigation Branch regarding refusal to comply with a court judgment, meritorious complaints of non-compliance with a court judgment or meritorious new unfair labor practice allegations that may constitute contempt of a court judgment. Sections 10590.1, 10590.4(a), 10590.6, 10590.7, and 10592.1.

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7. A copy of any investigative subpoena issued in a postjudgment matter together with a memorandum setting forth the basis on which it was issued. Section 10590.2.

8. Copies of papers filed to secure enforcement of an investigative subpoena. Section 10590.2.

9. A copy of any notification submitted to Contempt Litigation Branch of additional parties that may be liable for backpay in court judgment cases. Section 10590.8(d)(4).

10. A copy of any submission to Contempt Litigation Branch regarding whether contempt proceedings are warranted over reinstatement in a court judgment case. Section 10590.9.

11. Copy of submission to Contempt Litigation Branch requesting authorization, in postjudgment situations, before failing to provide notice of Board or related proceedings to a third party involved in significant asset transactions with a respondent. Section 10594.3(a).

12. Executed settlement stipulation and security agreement, with cover memorandum recommending it be forwarded to the Board for approval. Section 10603.

13. A copy of any submission to the Division of Advice or Special Litigation Branch concerning respondents who have been discharged in bankruptcy. Section 10610.2(m).

14. A recommendation that enforcement proceedings be initiated when the respondent is in liquidation through bankruptcy. Section 10610.10.

15. A copy of any compliance specification issued. Section 10622.4.

16. A copy of any amended compliance specification when the amendments are substantial. Section 10625.

17. A schedule of proposed action for each Stage 1 or Stage 2 case that cannot be completed within the 80-day time period because of extraordinary and involved problems. Section 10675.

18. A request for advice concerning techniques, procedures, internal policy, and other issues in prejudgment matters. Section 10676.

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19. A copy of a request for advice submitted to the Division of Advice concerning substantive legal issues in postjudgment matters. Section 10676.

20. A copy of the Regional Office Closed Case Report (Form NLRB-4582), at the time a case is closed. Section 10685.

### **C. Notify**

1. Of significant developments or progress in securing compliance with a Board order when the case has been referred for enforcement proceedings. Section 10585.5.

2. Of any problem enforcing an investigative subpoena. Section 10590.2.

3. Of any contempt proceeding initiated by a private party concerning a case in which a court judgment has enforced a Board order. Section 10592.1(b).

4. Of the Region's determination that a new unfair labor practice charge lacks merit, when the charge has been filed against a respondent to a court judgment case which the Region has submitted to Contempt Litigation Branch, recommending contempt proceedings. Section 10592.2.

5. Of significant developments or progress in securing compliance with a court judgment when the case has been referred for contempt proceedings. Section 10592.2.

6. Of any threat by a respondent or third party to initiate litigation against the Board on the basis of notice given to potential successors of the pendency of unfair labor practice proceedings. Section 10594.3(a).

7. Of cases in which the respondent is in liquidation proceedings under bankruptcy, and where the Region has concluded that further unfair labor practice proceedings would not effectuate the purposes of the Act. Section 10610.2(c).

8. In cases where a corporation or partnership has been liquidated in bankruptcy and the Region intends to commence or continue prosecution of an unfair labor practice case. Section 10610.2(m).

## **10680.1–10680.2**

### **D. Consult**

1. On questions concerning the Family and Medical Leave Act of 1993. Sections 10529.4 and 10546.3.

2. With respect to the Region's response to an entity's motion, pursuant to the Right to Financial Privacy Act, to quash a subpoena. Section 10601.3.

## **10680.2 Contempt Litigation Branch**

### **A. Obtain authorization:**

1. Before initiating administrative proceedings based on new unfair labor practice charges that may constitute contempt of a court judgment. Section 10590.4(b).

2. Before issuing a compliance specification where a controversy exists concerning reinstatement provisions of a court judgment, and where the determination of backpay depends on whether there has been proper reinstatement. These situations should be submitted to Contempt with a recommendation whether contempt proceedings are warranted. Sections 10527.7 and 10590.9.

3. Where, following a recommendation for contempt proceedings, unusual circumstances or problems militate against notice of potential liability to a third party which may acquire the respondent's business. Section 10592.8.

4. Before closing a court judgment case on compliance where contempt proceedings had been initiated or were under consideration. Section 10592.9.

5. In postjudgment situations, before failing to provide notice of Board or related proceedings to a third party involved in significant asset transactions with a respondent. Section 10594.3(a).

**B. Submit**

1. Cases where a respondent refuses to comply with any provision of a court judgment, where there is a meritorious allegation of noncompliance with a court judgment, or where a meritorious new unfair labor practice charge has been filed in which the allegations may constitute contempt of a court judgment, with a recommendation regarding whether contempt proceedings are warranted. Sections 10590.1, 10590.4(a), 10590.6, 10590.7, 10592.1(a), and 10592.4.

2. A copy of a request submitted to the Division of Operations-Management for authorization to issue an investigative subpoena concerning conduct not clearly the subject of a court judgment enforcing a Board order. Sections 10590.2 and 10601.2.

3. A copy of a recommendation submitted to the Division of Operations-Management requesting authorization to close a court judgment case when the Region has concluded that the respondent is without means of paying backpay liabilities. Section 10590.8(d)(2).

4. For cases which the Region referred to the Contempt Litigation Branch, requests by a charging party for a written statement as to why contempt proceedings were not authorized. Section 10592.5.

5. Any recommendation that a protective order or injunctive relief be sought in a court judgment case. Section 10594.2(b).

6. Requests for a Lexis/Nexis search. Section 10601.5.

**C. Notify**

1. Of additional parties that may be liable for backpay in court judgment cases. Section 10590.8(d)(4).

2. Of any contempt proceeding initiated by a private party concerning a cases in which a court judgment has enforced a Board order. Section 10592.1(b).

3. Of significant developments or progress in securing compliance with a court judgment when the case has been referred for contempt proceedings. Section 10592.2.

## **10680.2**

4. Of the Region's determination that a new unfair labor practice charge lacks merit, when the charge has been filed against a respondent to a court judgment case which the Region has submitted to Contempt Litigation Branch, recommending contempt proceedings. Section 10592.2.

5. If a United States district court refuses to register a backpay judgment. Section 10593.5.

### **D. Consult**

1. When the Region has a reason to believe that a respondent is siphoning assets, not reporting income, or is otherwise acting to evade liabilities. Section 10564.13.

2. Regarding whether particular conduct is the subject of a judgment, when considering issuing an investigative subpoena. Section 10590.2.

3. Before issuing an investigative subpoena for records that may be covered by requirements of the Right to Financial Privacy Act. Section 10590.2.

4. When the Region is uncertain whether a complaint of noncompliance with a judgment should be addressed by filing a new unfair labor practice charge. Section 10590.3.

5. In cases of doubt, and when the case had *not* been submitted to Contempt, before approving an unsolicited withdrawal request of an unfair labor practice charge that may also constitute contempt with a court judgment. Section 10590.4(a)

6. Regarding collection proceedings pursuant to a court judgment. Sections 10592.3(d) and 10593.3.

7. With questions concerning an investigation of respondent ability to pay and derivative liability. Section 10600.2

8. With any question regarding subpoena of bank records and the applicability of the Right to Financial Privacy Act or with respect to the response to an entity's motion to quash a subpoena. Section 10601.3.

9. Concerning requirements under state law for filing and perfecting a lien. Section 10603.

## **10680.2–10680.3**

10. Concerning contempt issues generally. Section 10676.

### **10680.3 Special Litigation Branch**

#### **A. Obtain authorization or clearance:**

1. In cases where a complaint has already issued, before undertaking further proceedings when the Region learns that the respondent has been discharged in bankruptcy. Section 10610.2(m).

2. Prior to approving a withdrawal request or a settlement agreement that would affect the Board's position in a pending bankruptcy matter. Section 10610.8.

3. To *not* notify a potential successor of the pendency of unfair labor practice proceedings in a court judgment case when respondent is in bankruptcy. Section 10594.3(a).

#### **B. Submit**

1. A copy of a disclosure statement and proposed plan of reorganization together with the Region's proof of claim when the Region determines it is necessary to object, or has any question concerning whether it should object to it. Section 10610.5(b). Any recommendation should also be submitted.

2. Bankruptcy cases involving contested matters, adversary proceedings, or novel or complex issues. Section 10610.8(a).

3. Any motion or petition in bankruptcy proceeding to estimate a Board claim. Section 10610.8(c).

4. Any motion or complaint seeking to have the Board's proceedings enjoined, plus all relevant pleadings and records from the bankruptcy and unfair labor practice proceedings. Section 10610.2(b).

#### **C. Notify**

1. Of any problem in enforcing an investigative subpoena. Section 10590.2.

#### **10680.3–10680.4**

2. Of any threat by a respondent or third party to initiate litigation against the Board on the basis of notice given to potential successors of the pendency of unfair labor practice proceedings. Section 10594.3(a).

3. Immediately, of any effort to have Board unfair labor practice proceedings enjoined because of bankruptcy proceedings. Section 10610.2(b). Copies of pleadings and relevant records should be forwarded as soon as possible. Section 10610.2(b).

4. Immediately, on notice of any objection filed to the Region's proof of claim. Copies of the objections and supporting papers to both the claim and objection to be forwarded as soon as possible. Sections 10610.2(f) and 10610.3(c).

5. Of any proposal to sell the debtor's assets "free and clear" of encumbrances. Section 10610.2(k).

6. Prior to seeking discovery pursuant to Rule 2004. Section 10610.7(c).

7. Of any action to lien or levy a backpay award if the initiator of the action does not agree to withdraw it. Section 10635.8.

#### **D. Consult**

1. Regarding collection proceedings when the respondent is in bankruptcy. Section 10592.3(d).

2. Regarding protective orders or injunctive relief against respondents involved in bankruptcy proceedings. Section 10594.2(b).

3. Regarding bankruptcy matters generally. Sections 10610 and 10676.

4. Regarding backpay received from a bankruptcy distribution on behalf of a discriminatee who is missing. Section 10647.

#### **10680.4 Division of Enforcement Litigation, Appellate Court Branch**

##### **A. Notify**

1. Of submission of court cost checks to Finance Branch. Section 10522.



## **10680.4–10680.5**

2. Of significant developments in securing compliance with a Board order when the case has been referred for enforcement proceedings. Section 10585.5.

3. When a respondent has filed a motion for reconsideration with the Board after the Region has recommended enforcement proceedings. Section 10585.6.

### **B. Submit**

1. Quarterly report on pending cases that require payment of court costs. Section 10522.

2. Cases in which the Region has been unable to obtain payment of court costs, or when a settlement offer is made by respondent. Section 10522.1.

3. A recommendation that a protective order or 10(e) injunctive relief be sought in a Board order case. Sections 10585.4 and 10594.2(c).

## **10680.5 Division of Advice**

**Obtain authorization or clearance:** Before issuing a complaint when the respondent has been discharged in bankruptcy. Section 10610.2(m).

### **B. Submit**

1. Cases which present the question of whether a respondent may rely on an INS determination concerning the legal status of an alien that has been appealed in establishing remedial reinstatement rights. Section 10546.7.

2. Cases where the respondent contends that a discriminatee has submitted fraudulent documentation of immigration status. Section 10546.7.

3. Any issue concerning a discriminatee's failure to seek or obtain interim employment because of an inability to provide required documentation of immigration status. Section 10546.7.

4. A recommendation that a protective order or injunctive relief be sought in a case where a complaint has issued but a Board order has not yet issued. Section 10594.2(b).

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5. A request for advice regarding substantive legal issues. Section 10676.

**10680.6 Finance Branch**

**A. Submit**

1. Checks received for court costs. Section 10522.
2. Backpay checks and Forms NLRB-5472 and NLRB-5473 when opening an Agency escrow account. Section 10640.3.

**10680.7 Office of Appeals**

**A. Submit**

1. A copy of any compliance determination issued. Section 10575.2.
2. The Region's compliance file, on receipt of a copy of an appeal from the Region's compliance determination, or a letter from the Office of Appeals acknowledging an appeal. Section 10575.3.

**10680.8 Chief, Case Records Unit**

**A. Submit**

1. Duplicate exhibits from underlying unfair labor practice proceedings, when a case is being recommended for initiation of enforcement proceedings. Section 10585.4.
2. R-Case transcripts, original exhibits, and the Regional Office case file, without witness affidavits, when submitting a case for enforcement proceedings in a test of certification. Section 10585.4.

**10680.9 Library and Records Management Branch**

**Submit:** Requests for a Dun and Bradstreet report. Section 10601.5.

**10680.10 Statistical Services Unit, Management and Information Systems Branch**

**Submit:** A monthly compliance status report. Section 10673.

**10685 Closing Cases on Compliance**

**10685.1 Compliance With Informal Settlements:** Reports of the compliance officer in cases of informal settlement should be submitted with appropriate recommendations to the Regional Director. See Unfair Labor Practices Proceedings Manual section 10146. Closing action should be in accord with the requirements of Unfair Labor Practice Proceedings Manual sections 10150.3 and 10673.2.

**10685.2 Standard Case-Closing Procedures:** The following procedures to close and report a compliance case are to be used when:

- a. The Regional Director is satisfied that compliance in accordance with outstanding policies and instructions has been achieved.
- b. Division of Operations-Management authorization was obtained prior to accepting a settlement.
- c. An appeal and request for review of a compliance determination have been denied, or time periods in which either may have been filed has lapsed.

**Report:** The Region should complete and submit one copy of Regional Office Closed Case Report, Form NLRB-4582, to the Division of Operations-Management, with a copy of the dated and signed notice attached. No covering memorandum or other material is required. The remarks section of Form NLRB-4582 may be used to explain any unusual circumstance or any other action not fully reported in other sections of the form.

**Record:** The Region and Washington shall record the case as closed as of the date on the Regional Office Closed Case Report.

**Notify:** Normally, on the same date that the Regional Office Closed Case Report is prepared and submitted, the Regional Director will notify the parties by letter of the closing of the case, cautioning that the closing is conditioned on continued observance of the order and that subsequent violations may become the basis of further proceedings.

**Exception:** When backpay has been deposited in escrow, notification of case closing to the parties should be held in abeyance pending disbursement of all backpay.

## **10685.3–10685.5**

**10685.3 Formal Settlement Cases:** In cases where a settlement stipulation provides for a Board order and consent court judgment, the case should not be closed until after the decree has been entered, despite earlier full compliance.

**10685.4 Procedures for Closing a Case on Compliance When Division of Operations-Management Authorization is Required:** Compliance Manual section 10680 discusses situations in which Division of Operations-Management authorization is required to close a case on compliance.

Note that when Division of Operations-Management authorization has been obtained to accept a settlement of compliance issues, there is no need to submit the case again for authorization at the time of closing.

See Compliance Manual section 10592.9 regarding situations when notification to Contempt Litigation Branch is required at the time of closing.

**Report** The Region should prepare and submit to the Division of Operations-Management the Regional Office Closed Case Report, Form NLRB-4582, indicating that authorization is being requested by checking the appropriate box in the upper right corner of the form. The Region should also prepare and attach to the form a memorandum, setting forth the pertinent facts of the case and the reason the Region is requesting authorization to close it.

See Compliance Manual section 10605 regarding authorization requests to close a case based on respondent inability to pay remedial liabilities.

**Record:** Cases requiring authorization will be closed on Washington and Regional Office records as of the date of authorization from the Division of Operations-Management.

**Notification:** The Region will notify the parties of the closing of the case, with the standard caution that the closing is conditioned on continued observance of the order and that subsequent violations may become the basis of further proceedings, on receipt of authorization from the Division of Operations-Management.

**10685.5 Closing Case Administratively:** To close a case administratively, that is, without notification to the parties, the Region must obtain authorization from the Division of Operations-Management. The Regional Office Closed Case Report should be submitted, as in a standard case

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closing, accompanied by a memorandum setting forth the basis for the request.

When there are other cases pending against the respondent, but it is otherwise appropriate to close the case on compliance, the Region is not required to obtain authorization to close a case administratively.

The case will be recorded in Washington and in the Region as closed on the date the Regional Office Closed Case Report was prepared.

In the event of changed circumstances that make it advisable to notify the parties of the closing of the case, the Regional Director should notify the parties by sending the usual closing letter.

See Compliance Manual section 10592.9 regarding situations when notification to Contempt Litigation Branch is required at the time of closing.

**Record:** Cases requiring authorization will be closed on Washington and Regional Office records as of the date of authorization from the Division of Operations-Management.

**Notification:** The Region will notify the parties of the closing of the case, with the standard caution that the closing is conditioned on continued observance of the order and that subsequent violations may become the basis of further proceedings, on receipt of authorization from the Division of Operations-Management.